

BOARD OF ZONING APPEALS MEETING

Meeting

TIPP CITY, MIAMI COUNTY, OHIO

MARCH 21, 2007

Chairman Ron Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:38 p.m.

Roll Call

Roll call showed the following Board Members present: Ron Poff, John Borchers, Alan Rodrigues, Dan Naas, and Stacy Wall. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.

Citizens signing the register: None.

**Board Minutes
2-21-07**

Chairman Poff asked for discussion. Mrs. Wall noted to remove "Naas" replace with "Rodrigues" as the voting member on the roll call vote for the absence of Mr. Naas. Mrs. Wall **moved to approve the February 21, 2007 minutes as amended**, seconded by Mr. Rodrigues. **Motion carried.** Ayes: Wall, Rodrigues, Poff, and Borchers. Nays: None. Mr. Naas abstained from the vote.

Citizen Comments

There were no citizen comments on items not on the agenda.

**Administration of
Oath**

Mrs. Patterson, notary, swore in Mr. Spring.

Board Members concurred to go forward with the public hearing even though the applicant was not present.

New Business

Mr. Borchers recused himself from the meeting.

**Case No. 02-07:
Tipp Merchants
718 Nelson Ct.
Sign Variance
Requests**

Case No. 02-07: Ruth Safreed c/o Tipp City Merchants – 718 Nelson Court, Tipp City – Inlot: 2811

Applicant requested three variance requests:

Variance 1

A variance of 16 days to the maximum allowable display period for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(6).

Variance 2

A variance of 58 square feet to the maximum allowable area for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3).

Variance 3

A variance of eleven (11) feet to the maximum allowable height for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3).

Present Zoning District: R-2 – Urban Residential Zoning District
Section(s): §154.097(B), §154.106(C) & §154.175(E)(7)

Mr. Spring stated that the applicant requested three (3) variances regarding the placement of a temporary sign at 718 Nelson Court. This sign would promote an upcoming antique and artisan show in Tipp City, which will take place on June 30, 2007. The sign would be located in the rear yard

of the property, abutting I-75.

The antique and artisan show was defined in Code §154.092 as a Community Activity or Special Event:

An activity or event that is open to the general public, utilizes City facilities or services, and sponsored by a public, private nonprofit or religious organization that is educational, cultural, or recreational in function. Charitable events sponsored by for-profit organizations are also considered community activities. Examples of a community activity are a school play or a church fair. A special event is educational, cultural or recreational in function. Such events must be coordinated through the city. Examples of a special event are the Memorial Day Parade and the Mum Festival.

Signage for Community Activities and Special Events is defined as Promotional Signage under Code §154.092:

A temporary sign that provides information regarding time, place, and the like of a special event, community activity or similar activity.

Promotional signage for Community Activities and Special Events is regulated under Code §154.097.

Variance 1

A variance of 16 days to the maximum allowable display period for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(6).

Code §154.097(B)(6) indicates:

Promotional signs shall not be displayed more than fourteen days immediately preceding the event and shall be removed no later than 24 hours following conclusion of the event.

The applicant proposed to display the temporary promotional sign from June 1, 2007 through June 30, 2007 (30 total days). Code §154.097(B)(6) allows for no more than fourteen total days. Therefore requiring a variance of 16 days ($30 - 14 = 16$) to Code §154.097(B)(6).

Variance 2

A variance of 58 square feet to the maximum allowable area for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3).

Code §154.097(B)(3) indicates:

Promotional signs may not exceed six square feet in area and three feet in height.

The applicant proposed the placement of an 8' x 8' (64 square feet) promotional sign in the rear yard of 718 Nelson Court. Code §154.097(B)(3) requires that promotional signs may not exceed six (6) square feet in area. Therefore requiring a variance of 58 square feet ($64 - 6 = 58$) to Code §154.097(B)(3).

Mr. Spring noted that the applicant was requesting a variance of 1,066% to the allowable area for promotional signage. Code §154.175(E)(7) states:

(E) "The Board may grant variances only in the following instances and no others:

- (7) To increase the maximum allowable size or area of signs on a lot by not more than 25%

Therefore, the BZA was **prohibited** by code to grant the requested variance, with the maximum possible variance grantable by the BZA being 1.5 square feet ($6 \times 25\% = 1.5$), which would thus allow a promotional sign of 7.5 square feet ($6 + 1.5 = 7.5$).

Variance 3

A variance of eleven (11) feet to the maximum allowable height for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3).

Code §154.097(B)(3) indicates:

Promotional signs may not exceed six square feet in area and three feet in height.

Code §154.092 indicates:

Height. The vertical distance from the uppermost point used in measuring the area of a sign, to the crown of the road on which the property fronts.

Mr. Spring stated that the applicant proposed the placement of a promotional sign ten (10) feet in total height the rear yard of 718 Nelson Court. The proposed sign would be placed in the rear yard fronting I-75; therefore the crown of I-75 must be used in determining sign height for this request. Topographic data for the site indicates that the crown of I-75 is at $\pm 906'$ elevation and the mound on which the sign is proposed to be located is at 910' elevation. Therefore the sign height must include this four (4) foot variation in the total calculation of the signs height. The sign itself is ten (10) feet in height, plus the additional four (4) feet in grade differentiation for a total sign height of fourteen (14) feet. Code §154.097(B)(3) requires that promotional signs may not exceed three (3) feet in height; therefore requiring a variance of eleven (11) feet to Code §154.097(B)(3).

Staff notes the Board of Zoning Appeals has jurisdiction in this case to grant the variance # 1 and # 3 as requested above. Code §154.106(C) of the sign code states:

- (1) A variance from any provision of this subchapter may be granted by the Board of Zoning Appeals (subject to §154.150(E)(7) if applicable) except for sign height variances for ground signs, where the strict interpretation of this subchapter would create an unusual and unnecessary hardship on the property owner due to the unique location or physical characteristics of the property, if the variance would not adversely affect the public interest in any manner.
- (2) An affirmative vote of a majority of the members of the Board of Zoning Appeals is required for a variance or for reversal of the decision of the Zoning Administrator or other authorized enforcement officer.

Staff notes the Board of Zoning Appeals **DOES NOT** have jurisdiction to grant variance # 2 as requested. Code §154.175(E)(7) states:

(F) "The Board may grant variances only in the following instances and no others:

- (8) To increase the maximum allowable size or area of signs on a lot by not more than 25%

Therefore, the BZA is prohibited by code to grant the requested variance, with the maximum possible variance grantable by the BZA being 1.5 square feet ($25\% = 1.5$), which would thus allow a promotional sign of 7.5 square feet ($6 + 1.5 = 7.5$).

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring noted the following regarding the case:

- The BZA was prohibited by Code §154.175(E)(7) in granting the requested variance for sign area, with the maximum possible variance grantable by the BZA being 1.5 square feet ($6 \times 25\% = 1.5$), which would thus allow a promotional sign of 7.5 square feet ($6 + 1.5 = 7.5$).
- Code §154.106(C) specifically prohibits variances for the height of ground signs. The strict interpretation of the definition of ground signs does not include "temporary signs" such as is this request. Therefore, the granting of a variance for sign height was technically possible, although it may not be in the spirit of the overall sign code provisions.
- It was important to note that in order to grant variances from the sign code that Code §154.106(C) requires that the strict interpretation of the sign code would create an unusual and unnecessary hardship on the property owner due to the unique location or physical characteristics of the property. Staff noted that the applicant for this variance (Ruth Safreed for Tipp City Merchants) was not the property owner (Nelson Borchers), thereby creating an inherent difficulty for the BZA to justify hardship in this case.
- On April 19, 2006, a virtually identical request came before the BZA. Staff noted that all three variance requests (as similarly noted above) were denied by the Board. On May 15, 2006, the case was appealed to City Council which affirmed variance #1 above (thus allowing the sign to be displayed for only 14 days total); and overturned the BZA's decision on variances #2 and #3 (thus allowing the sign to be 64 sq. ft. in area and 14 ft. in height).

Board Members discussed the possible 25% increase that could be granted but noted that was not requested from the applicant.

Variance 1

Chairman Poff asked for further discussion. There being none, Mr. Rodrigues **moved to deny a variance of 16 days to the maximum allowable display period for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(6)**, seconded by Mrs. Wall. **Motion**

carried. Ayes: Rodrigues, Wall, Naas, and Poff. Nays: None.

Variance 2

Chairman Poff asked for further discussion. There being none, Mr. Rodrigues moved to deny a variance of 58 square feet to the maximum allowable area for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3), because it does not comply with the requirements set forth in Code §154.175(E)(7), seconded by Mrs. Wall. **Motion carried.** Ayes: Rodrigues, Wall, Naas, and Poff. Nays: None.

Variance 3

Chairman Poff asked for further discussion. There being none, Mr. Rodrigues moved to deny a variance of eleven (11) feet to the maximum allowable height for a temporary promotional sign for a community activity or special event noted in Code §154.097(B)(3), seconded by Mrs. Wall. **Motion carried.** Ayes: Rodrigues, Wall, Naas, and Poff. Nays: None.

Chairman Poff requested that Staff remind the applicant that their right to an appeal within the 10-day period. Mr. Spring stated that staff would convey that to the applicant in writing.

Board Members briefly discussed the appeal process.

Mr. Borchers rejoined the meeting.

Old Business

There was none.

Miscellaneous

Board Members appreciated the three ring binders to keep their zoning codes in.

Adjournment

There being no further business, Mr. Poff moved to adjourn the meeting, seconded by Mrs. Wall and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 7:56 p.m.

Stacy M. Wall
Ron Poff, Chairman
VICE CHAIRMAN, STACY WALL

Attest: Kimberly Patterson
Kimberly Patterson, Board Secretary

